

Consent Agenda
Tree Removal Appeal Case A-2203

Removal of one twenty-four (24)-inch diameter
Sycamore tree located in the rear yard of the
property.

Ms. Sarah Brodsky Miller
105 Primrose Street

To: Chevy Chase Village Board of Managers
From: Laura Billings
Date: October 30, 2015
Re: **TOB Report Regarding Case A-2203:**
Ms. Sarah Brodsky Miller, 105 Primrose Street
Removal of one 24-inch diameter Sycamore from the rear yard.

Mr. & Ms. Miller wish to remove a 24-inch Sycamore tree from the rear yard of the property in order to accommodate a proposed addition.

In preparing a tree protection plan associated with the proposed construction, the Village consulting arborist determined that the grading and excavation required for the proposed garage could not accommodate the root system of the tree and in fact would cause irreversible harm to the tree. The Millers then applied to obtain a removal permit for the Sycamore, which was denied because the tree is healthy. The applicants duly filed an appeal of the Village Manager's decision to deny removal of the Sycamore and were then referred to the Tree Ordinance Board. The Millers expressed a willingness to reforest on their property with a suitable reforestation canopy tree.

I contacted the Miller's closest neighbors (where possible) about the proposed removal. No neighbor expressed concern regarding the removal.

The three members of the TOB inspected the tree and potential sites for reforestation.

The Millers will select the specimen for reforestation from the Village's approved list of canopy trees, and it will be a hardwood deciduous tree of at least 2 1/2" caliper at installation which will grow to a mature height of 45 feet. The Applicant will pay the cost of said tree and any associated costs with planting.

I believe that the foregoing reflects a reasonable resolution of the issues in a manner consistent with Village Board policies.

Submitted by:
Laura Billings
Chairperson
Tree Ordinance Board

Property Address: 105 Primrose Street

REFORESTATION CONSENT AGREEMENT

RECITALS

This Consent Agreement ("Agreement") is entered into by CHEVY CHASE VILLAGE, ("Village"), a Maryland municipal corporation and Ms. Sarah Brodsky Miller, (the "OWNER"), the owner of the East Fifty (50) feet of Lot numbered Three (3) and the west Twenty (20) feet of Lot numbered Four (4) in Block lettered "A" in the subdivision known as "SONNEMAN'S ADDITION TO CHEVY CHASE", as per plat recorded in Plat Book 1 at Plat Number 42 and as shown on the Plat of "SECTION NO. 6, CHEVY CHASE", recorded in Plat Book No. 3 Plat 258 among the Land Records of Montgomery County, Maryland (the "Property").

The Owner has requested a permit from the Village Manager under Section 17-3 of the Village Code to remove one 24-inch diameter Sycamore tree, hereinafter referred to as the "Subject Tree", (the trunk of which measures more than 24 inches in circumference at 4-½ feet above ground and therefore requires a permit for removal) located in the rear yard of the Property as indicated on the plan attached hereto as Exhibit A. The Owner seeks to remove the Subject Tree in order to construct an addition, hereinafter referred to as the "Proposed Work". The Village Manager denied the permit for failure to meet any of the conditions set forth in Section 17-3.

The Owner has appealed the denial of the permit. The appeal was considered under the criteria set by Section 17-5 of the Village Code, by the Tree Ordinance Board ("TOB"), which has issued its recommendation.

The TOB, after following the requirements for notice to confronting and abutting owners and the Village Tree Committee, concluded that the Proposed Work was a legitimate reason for removing the Subject Tree, that it was necessary to remove the tree to construct the Proposed Work, and that the tree proposed to be removed was not by reason of its age, size or outstanding qualities, including uniqueness, rarity or species specimen, of such nature as to require its preservation.

Based on the foregoing, the TOB provided its recommendation, which has been accepted by the Board of Managers. The Board has decided that it is in the public interest to grant the Owner's appeal, on condition that the Owner sign this Agreement.

NOW, THEREFORE, in consideration of the mutual undertakings and obligations herein contained, One Dollar (\$1.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Village and the Owner hereby agree and covenant as follows:

1. The Owner agrees that, within six months from the close out date of Chevy Chase Village Building Permit associated with the proposed work, the Owner will plant a Reforestation Tree (or variety thereof) of at least 2-½ inches in caliper, to be selected from the Village's list of approved canopy trees. The Owner agrees to plant the Reforestation Tree on his property in a location to be determined on the Property. The Owner also agrees to plant the Reforestation Tree no closer than five feet to any side or rear property line. Should the Reforestation Tree become diseased or die within two years of the effective date of this Agreement, the Owner agrees to replace such tree.
2. Any changes or modifications to the Reforestation Plan shall require the further written consent of the Village, which may be withheld in the Village's sole discretion.
3. The Owner acknowledges that compliance with this Consent Agreement is necessary for the protection of the public health, safety and welfare of the residents of the Village and acknowledges and agrees, in the event of Owner's breach of this Agreement, that the Village would not have an adequate

remedy at law, and the Village shall be entitled to specific performance of the Owner's obligations and to injunctive relief related thereto without posting a bond or proving actual damages, in addition to any other remedies which may be available. The Owner further agrees that the costs incurred by the Village to enforce the Agreement, including legal expenses, shall be charged to the Owner and may be assessed against the Owner's property along with property taxes. The Owner further agrees not to contest any action brought by the Village to obtain specific performance and injunctive relief under this Agreement.

4. The Owner also acknowledges that the Village and the public residing in the Village would incur substantial damages in the event of Owner's breach of the requirements of this Agreement, including, but not limited to, the costs of staff time, arborist time, and other expenses incurred in enforcing this Agreement and the diminution of the Village's tree canopy. The parties recognize the difficulty in computing actual damages and, accordingly, agree to liquidated damages for the aforesaid costs, delay, and harm to the public. The parties acknowledges that liquidated damages of \$1,000.00 are a reasonable estimate, at the time of the execution of this Agreement, of the damages to the Village and the public that will likely occur as a result of the Owner's failure to perform their obligations under this Agreement. The Owner acknowledges that the liquidated damages agreed to are not a penalty and that they, along with any costs incurred by the Village, including legal expenses, may be assessed against the Property along with property taxes.

5. The Owner shall be jointly and severally liable for his obligations hereunder and expressly waives any right to a jury trial.

6. The effective date of this Consent Agreement is the date the Village Manager signs the Agreement signifying that she has been informed by the Village Board of Managers that the Consent Agreement has been approved.

OWNER:

CHEVY CHASE VILLAGE

By: _____
Sarah Brodsky Miller

By: _____
Shana R. Davis-Cook, Village Manager

Date: _____

DRAFT

Chevy Chase Village

Statement of Appeal for Tree Removal Permit

Subject Property: 105 PRIMROSE STREET, CHEVY CHASE MD.	
Briefly Describe the Proposed Tree Removal (provide additional detail on following pages): 36" DIA. SYCAMORE - N.E. CORNER OF PROPOSED ADDITION TREE MUST BE REMOVED TO BUILD ADDITION.	
Applicant Name(s) (List all property owners): SARAH BRODSKY MILLER	
Daytime telephone: 202 - 251 - 5157	Cell:
E-mail: Sarahbrodsky@gmail.com	
Address (if different from property address):	
For Village staff use: Date this form received: 10/13/15	
Tree Removal Permit Appeal No: A-2203	

Filing Requirements:

(Application will not be accepted or reviewed until the application is complete.)

- Completed Chevy Chase Village Statement of Appeal for Tree Removal Permit (this form)
- Denied Chevy Chase Village Tree Removal Permit Application
- Chevy Chase Village Tree Inspection Report from Village Arborist
- Surveys, plats, landscaping plans/specifications, or other accurate drawings showing boundaries, dimensions, and area of the property, as well as the location and dimensions of all structures/fences/walls/etc. and the tree(s) sought to be removed.
- Appeal fee (See fee schedule in Chapter 6 of the Village Code).

Affidavit

I hereby certify that I have the authority to submit the foregoing appeal, that all owners of the property have signed below, that I have read and understand all requirements and that I or an authorized representative will appear at the scheduled public hearing in this matter. I hereby authorize the Village Manager, or the Manager's designee, the Board of Managers, and members of the Village Tree Committee, to enter onto the subject property for the purposes of assessing the site in relation to this appeal. I hereby declare and affirm, under penalty of perjury, that all matters and facts set forth in the foregoing statement are true and correct to the best of my knowledge, information and belief.

Applicant's Signature: J. B. Miller

Date: 10/12/2015

Applicant's Signature: _____

Date: _____

Describe the basis for the appeal (attach additional pages as needed)

Describe the reasons why the tree removal would not adversely affect the public health, safety or welfare nor the reasonable use of adjoining properties:

We see no reason why removing this tree would affect public health or safety - Neighbor of adjoining property (107 PRIMEOSE) agrees that removing the tree would not impact her negatively in any way.

Describe the reasons why the tree removal would not substantially impair the intent and purpose of Chapter 17 of the Chevy Chase Village Code, entitled *Urban Forest*:

The Sycamore in question is not in a high visibility area and is still a fairly young tree - 35 yrs old, it seems as though it could be replaced with more desirable tree or trees in a better location.

Describe whether the tree exhibits any of the following criteria: (i) is diseased beyond restoration, insect infested beyond restoration, or injured beyond restoration; (ii) is dead or dying, or in danger of falling; (iii) constitutes a hazard to the safety of persons; (iv) constitutes a hazard to the safety of property; (v) constitutes a hazard and threatens injury to, or would have a negative effect on the health of other trees; (vi) is injurious to or creates a condition injurious to the health of a person, certified to by a qualified medical practitioner:

The tree is too close to build the proposed addition - if the tree could be saved the root system would most likely cause future problems as it would grow under the foundation.

Describe the reasons for wanting to remove or destroy the tree(s):

The location of the tree and the extent of its root system is impeding the construction of an approved addition to the existing house.

Describe the reasons, if any, cited by residents who are either in favor of or in opposition to the issuance of the requested tree removal permit:

No opposition - Adjoining neighbor to east at 107 Primeose has stated that she is in favor of removing the tree.

If the desired tree clearing is necessary to achieve proposed development, construction or land use otherwise permitted under the Village Code, describe the proposed project and/or land use and any reason(s) why there is no reasonable alternative to the tree removal:

At this point, pre design meetings have taken place - design has been finalized and approved by county - any redesign would drastically effect cost & schedule.

Describe any proposed reforestation and whether the proposed reforestation includes any trees that meet the Village standards for reforestation (i.e., deciduous hardwood trees that are least 2 ½ inches in caliper at the time of installation and of a species that achieves a mature height of at least 45 feet):

No reforestation plan at this time - we are more than willing to plant new trees to replace this one -

Describe any hardship that would result if the requested tree removal is denied:

Re design fees for addition, impact to schedule, possible loss of desired design for Garage / Guest Room above.

Describe the reasons why preserving the tree(s) is not desirable because of the age, size or outstanding qualities, including uniqueness, rarity or species specimen, of the tree(s):

Arborist has stated that the tree is about 35 yrs. old. To our knowledge it is not a rare species and is not in a high visibility area.

Describe any other relevant matters that you believe would promote fairness and justice in deciding this appeal:

In authorizing a Tree Removal Permit as a result of this appeal, the Chevy Chase Village Board of Managers may require such conditions, terms or restrictions as it deems necessary in order to protect the public, health, safety or welfare, the reasonable use of adjoining properties and that will substantially effectuate the purpose and intent of Chapter 17 of the Chevy Chase Village Code.

Appeal Fee: \$250.00	Checks Payable To: Chevy Chase Village 5906 Connecticut Ave. Chevy Chase, MD 20815
Fee Paid: Date Paid:	Staff Signature: Date:

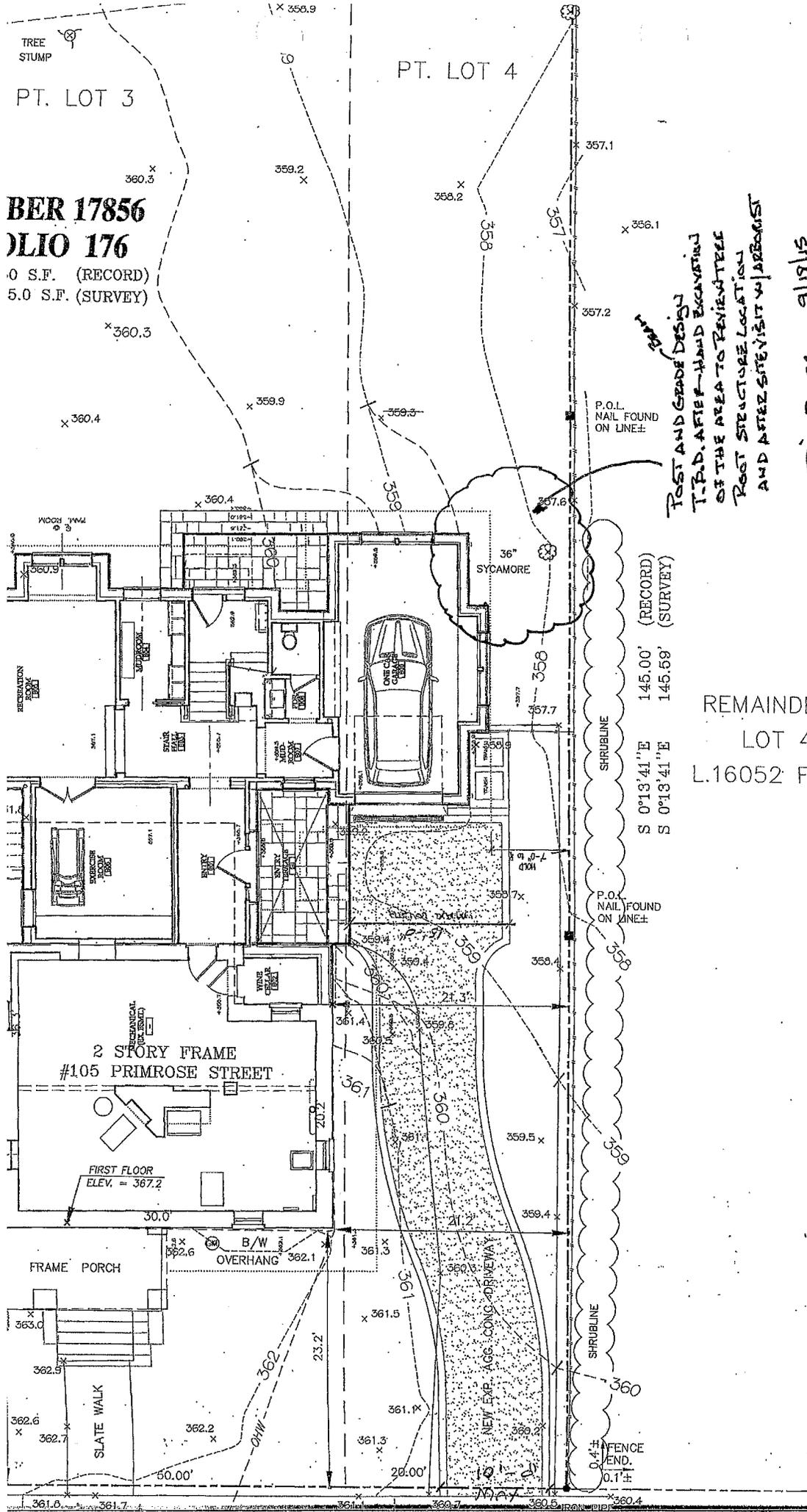
TREE STUMP

PT. LOT 3

PT. LOT 4

BER 17856
OLIO 176

0 S.F. (RECORD)
5.0 S.F. (SURVEY)



Handwritten: POST AND GRADE DESIGN T.P.D. AFTER HAND EXCAVATED OF THE AREA TO REVEAL TREE ROOT STRUCTURE LOCATION AND AFTER SITE VISIT W/ ARCHITECT

Handwritten: Rick Bayler 9/19/15 WINCHESTER CONST. CO.

S 0°13'41"E 145.00' (RECORD)
S 0°13'41"E 145.59' (SURVEY)

REMAINDER OF LOT 4
L.16052 F.680

1 OVERLAY FLOORPLAN/GRADING
SCALE: 1/8" = 1'-0"

AS1

P.O.L. NAIL FOUND ON LINE ±

P.O.L. NAIL FOUND ON LINE ±

4" FENCE END 0.1' ±

MAILING LIST FOR APPEAL A-2203

**MR. & MRS. ROLAND MILLER
105 PRIMROSE STREET
CHEVY CHASE, MD 20815**

Adjoining and confronting property owners	
Mr. & Mrs. Richard White Or Current Resident 101 Primrose Street Chevy Chase, MD 20815	Ms. Susan Bollendorf & Mr. Robert D. Broeksmit Or Current Resident 107 Primrose Street Chevy Chase, MD 20815
Mr. & Mrs. William Mills Or Current Resident 100 Primrose Street Chevy Chase, MD 20815	Mr. & Mrs. Craig H. Ullman Or Current Resident 104 Primrose Street Chevy Chase, MD 20815

**Chevy Chase Village
Tree Inspection Request Form**

Property Address: <u>105 Primrose Street</u>
Date this form submitted to Village office: <u>10/14/15</u>
Resident Name: Phone: E-mail:
This request initiated by: <input type="checkbox"/> Village office staff. <input type="checkbox"/> Resident/property owner
<input checked="" type="checkbox"/> Inspect tree(s) ¹ requested for removal -- are any of conditions in Village Code Sec. 17-3(a) met? <input type="checkbox"/> Inspect trees ¹ on property to determine if a Tree Protection Plan (TPP) is needed for proposed project ² . <input type="checkbox"/> Pursuant to a Village Bldg Permit application ² , prepare TPP for trees ¹ on property [\$250 fee] <input type="checkbox"/> Verify that a TPP has been implemented for Village Building Permit # _____. <input type="checkbox"/> Follow up on an existing TPP -- is it OK to remove TPP? <input type="checkbox"/> Village right-of-way/park <input type="checkbox"/> Other: _____
¹ Show location of tree(s) on a plat or site plan (or on diagram on reverse, but only if plat unavailable). ² Attach full description of proposed project.

Sections below must be completed by Village Arborist:

Tree #1: Private Property Village right-of-way
Location: Rear Front Side-L Side-R
DBH* = 24" **Species:** Sycamore **Tag#:** _____ n/a: no tag.
Assessment: Healthy

Tree #2: Private Property Village right-of-way
Location: Rear Front Side-L Side-R
DBH* = _____ **Species:** _____ **Tag#:** _____ n/a: no tag.
Assessment: _____

Tree #3: Private Property Village right-of-way
Location: Rear Front Side-L Side-R
DBH* = _____ **Species:** _____ **Tag#:** _____ n/a: no tag.
Assessment: _____

(For more trees, please check here and attach pages: # of extra trees _____; # of extra pages _____.)

Arborist assessment: Does tree meet any of the conditions in Village Code 17-3 to qualify for removal?

Removal Approved	Denied	*Is permit required? (i.e, trunk circumference ≥24"?)	Y	N
Tree #1 <input type="checkbox"/>	<input checked="" type="checkbox"/>		Tree #1 <input checked="" type="checkbox"/>	<input type="checkbox"/>
Tree #2 <input type="checkbox"/>	<input type="checkbox"/>		Tree #2 <input type="checkbox"/>	<input type="checkbox"/>
Tree #3 <input type="checkbox"/>	<input type="checkbox"/>		Tree #3 <input type="checkbox"/>	<input type="checkbox"/>

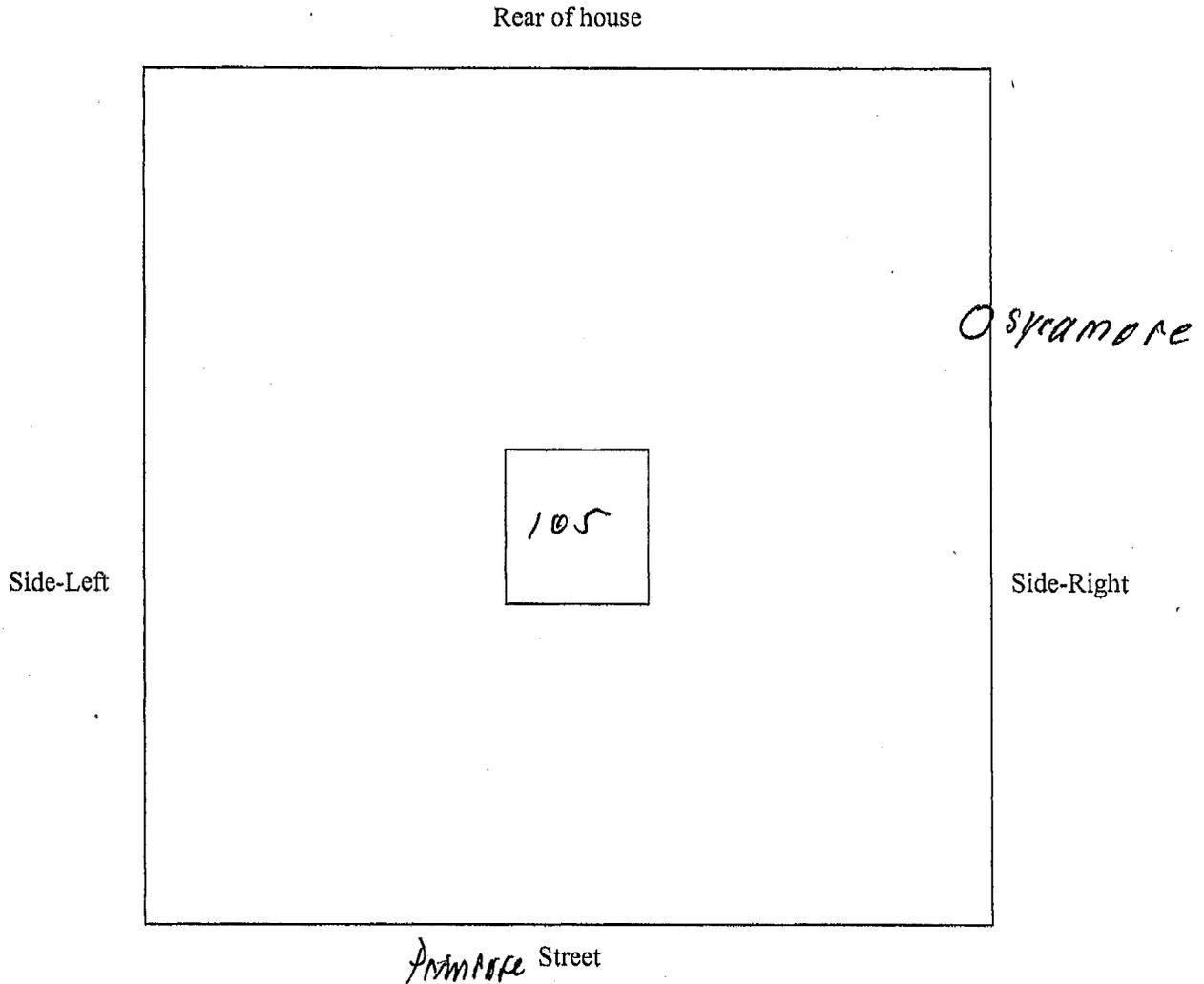
Arborist/Staff Signature  **Date** 10/29/15

Diagram for Tree Inspection/Reforestation Recommendation
(use this diagram ONLY if a plat or site survey is unavailable)

Instructions for Arborist (or) Notes from Arborist:

Arborist Reforestation Recommendation:
Species(s) (in Order of Preference)

Location (in Order of Preference)



Chevy Chase Village Tree Removal Permit Application

Permit No. A-2203

All trees on private property with trunks that measure at least twenty-four (24) inches in circumference (or 7.7 inches in diameter) at four and one-half (4½) feet above ground level require a Village permit to be removed.

Property Address: <u>105 PRIMROSE STREET, CHEVY CHASE MD.</u>	
Resident: <u>SARAH BRODSKY MILLER</u>	
Telephone: <u>202-251-5157</u>	
E-mail: <u>sarahbrodsky@gmail.com</u>	
Tree Removal Contractor (required):	
Business Name: <u>SHIFFLETT TREE SERVICE</u>	
Owner: <u>ERNEST SHIFFLETT</u>	
Address: <u>ROCKVILLE MD, 20855</u>	
Telephone: <u>(301) 948-5554</u>	Fax:
E-mail: <u>Shiffletttree@aol.com</u>	
MD Dept. of Natural Resources (DNR) License No. (required): <u>201</u>	
<i>For Village office staff use:</i>	
Is this property located within the historic district? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Staff initials <u>GB</u>
Date application submitted to Village Office: <u>10/19/15</u>	Date approved or denied: _____

Village Code Chapter 17. Urban Forest §17-1 and 17-2. Permit Required.

“No person shall remove or destroy, or cause the removal or destruction, of a tree or undertake any action that will substantially impair the health or growth of a tree without first obtaining a permit from the Village Manager. No permit shall be required for normal and reasonable trimming or other tree care designed to maintain the health, shape, or balance of a tree.”

Village Code §17-3. Permit Standards.

The Village Manager may issue a permit *only* if at least one (1) of the following conditions applies:

- The tree is diseased beyond restoration, insect infested beyond restoration, or injured beyond restoration;
- The tree is dead or dying, or is in danger of falling;
- The tree constitutes a hazard to the safety of persons;
- The tree constitutes a hazard and threatens injury to property;
- The tree constitutes a hazard and threatens injury to, or would have a negative effect on the health of other trees;
- The tree is injurious to or creates a condition injurious to the health of a person, certified to by a qualified medical practitioner.

An applicant who is denied a tree removal permit by the Village Manager may appeal that decision to the Board of Managers. Any appeal must be in writing and made within ten (10) days of the permit denial.

Filing Requirements

Copy of the findings and recommendations report from the Village Arborist.
 This completed application, including the tree contractor's name, phone number and MD-DNR License No.
 Payment of \$50.00 per tree filing fee for a Village Tree Removal Permit application, up to a max. of \$350.

Do you plan to reforest on your property? yes

By signing below, I understand that no work may be performed until the Village permit is issued and posted to be visible from the street.

Applicant's Signature: J. B. Miller Date: 10/12/2015

Tree Removal Plans (including reforestation plan, if any)	
For Use By Village Manager	Approved with the following conditions:
For Use By Village Manager	Denied for the following reasons:

<p><i>check</i> <i>6509</i></p> <p>Filing Fee: $\\$50.00/\text{tree} \times \underline{1} \text{ trees} =$ $\\$ \underline{50.00}$ (up to \$350 max. per application)</p>	<p>Checks Payable to:</p> <p style="text-align: center;">Chevy Chase Village 5906 Connecticut Avenue Chevy Chase, MD 20815</p>
<p>Damage Deposit</p> <p><input type="checkbox"/> \$ _____</p> <p><input type="checkbox"/> Waived by Village Manager.</p>	<p>Village Manager Signature: _____</p> <p>Date: _____</p>
<p>Total Fees + Deposit:</p>	<p>Staff Signature: _____</p> <p>Date: _____</p>